

### **REMARKS**

In view of the accompanying Petition For Revival Of An Application For Patent Abandoned Unintentionally under 37 CFR .137(b) (form PTO/SB/64) and the accompanying Request for Continued Examination, Applicants request further examination of the above-identified application and reconsideration of the final rejection of claims 1- 4 in the Office Action of July 8, 2005.

Claim 1 has been amended to correct a clerical error by deleting the extraneous term "air" following "stream" in line 3 and in line 5. Claim 1 has also been amended at line 9 thereof to delete "about" from the phrase "at least about 1.4 times greater" in line Claim 2 has been amended to delete "about" from the phrase "about 1.4" in line 3 thereof. Claims 3 and 4 remain as originally presented.

Claims 1-4 were finally rejected under 35 U.S.C. 102(b) as being anticipated by Roberts, U.S. Patent No. 5,357,767. The Examiner cites Roberts as disclosing the claimed invention, including the first air stream PC at a velocity of 200 fpm and the second air stream TC at a velocity of at least 300 fpm. The Examiner states that since Applicants' claim 1 does not recite that the two air streams have to be next to each other, it is permissible to call the air curtain PC the first air stream and the air curtain TC the second air stream. Based on this reasoning, the Examiner concludes that Roberts discloses a second discharge velocity that is at least 1.4 times greater than the first discharge velocity. Applicants respectfully traverse this rejection.

Roberts (see column 9, line 61 – column 10, line 13) discloses that the first primary air curtain PC, i.e. the innermost air curtain, is discharged at a reverse taper or air speed gradient from its back face to its front face of about 200 fpm to 250 fpm, that the secondary air curtain SC, i.e. the middle air stream, is discharged at a reverse taper or air speed gradient with a rear face velocity of about 250 fpm and a front or outer face of about 300 fpm, and that the tertiary air curtain, i.e. the outermost air curtain, has a box profile of about 300 fpm.

The velocity of the first air curtain PC is 200 fpm only at the interface with open-front of the display case. At its interface with the middle air curtain, the first air curtain PC has a velocity of 250 fpm. Ergo, the velocity of the first air curtain is not uniformly 200 fpm, but rather tapers from 250 fpm at its outer face down to 200 fpm at its inner

face. Therefore, Applicants respectfully submit that Roberts must be read to teach an average velocity for the first air curtain PC of about 225 fpm, not 200 fpm. Applicants respectfully submit that to select 200 fpm as the velocity of the first air curtain PC, while ignoring the air speed gradient across the first air curtain PC, constitutes hindsight reconstruction of the claimed invention in view of Applicants' own teachings.

With the velocity of the outermost air curtain TC being a uniform 300 fpm, and the velocity of the first air stream PC being its average velocity of 225 fpm, the ratio of the velocity of the air curtain TC to the velocity of the innermost air stream PC is  $300/225$  or 1.33, which is clearly less than 1.4 fpm. Applicants respectfully submit that the velocity ratio of 1.33 as disclosed in Roberts can not be read to anticipate under 35 U.S.C. 102(b) the second discharge velocity being "at least 1.4 times greater than" the first discharge velocity, as recited in Applicants' claim 1, nor to anticipate a ratio of the second discharge velocity to the first discharge velocity in the range "from 1.4 to about 1.8", as recited in Applicants' claim 2.

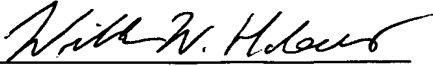
Upon reinstatement of the above-identified application on acceptance of the accompanying Petition For Revival Of An Application For Patent Abandoned Unintentionally under 37 CFR .137(b) (form PTO/SB/64), and reconsideration of the above-identified application in view of the accompanying Request for Continued Examination and the arguments presented herein, Applicants respectfully request that the Examiner withdraw the rejection of now pending claims 1-4 under 35 U.S.C. 102(b) as anticipated by Roberts and pass claims 1-4 to allowance.

If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-0835, under Order No. 1213\_018 from which the undersigned is authorized to draw.

Dated: August 3, 2006

Respectfully submitted,

By 

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